IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Revision No.95 of 2007.
Date of decision: 23.07.2007.

DAV College Management Committee ….**Petitioner**

Versus

R.K. Gupta ….**Respondent**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Petitioner: Mr.Tarlok Chauhan, Advocate.

For the Respondent: Mr.Ajay Kumar, Advocate.

Dev Darshan Sud,J.

This is plaintiff's revision against the order of the trial Court closing the right of the plaintiff for leading evidence in the suit.

The petitioner was the plaintiff before the trial Court. The plaintiff seeks possession of the premises from the respondent and mesne profits for use and occupation. The parties went to trial and evidence was recorded on 17.7.2001. The matter was listed for arguments on 23.9.2006. On 9.10.2006, the respondent-defendant filed an application under Order 14 Rule 1 and 2 of the Code of Civil Procedure claiming trial of an additional issue in the following terms:-

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***?

"3A. Whether the suit has not been filed by a competent and authorized person? OPD?".

This prayer of the plaintiff was allowed and the matter fixed on 16.12.2006 for evidence of the parties on the additional issue. The case of the plaintiff is that the matter was taken up by the trial Court on 16.12.2006, 23.2.2007 and 27.4.2007. On the first date, the trial Court noticed that the parties had not produced their evidence. A direction was issued for both the parties to bring their evidence at their own responsibility on 23.2.2007. On that date, again evidence was not present and time was granted to produce the evidence on 29.4.2007. On that date, a statement was made by the counsel for the plaintiff that although an official of the plaintiff was present, but the original record could not be brought by him. Ultimately, on 30.5.2007, the Court records that no witness of the plaintiff was present on the additional issue. Time was prayed for obtaining the relevant record which was lying in the head office of the plaintiff. The learned Court rejected the request on the ground that the onus of the issue was on the defendant. It records that sufficient time had been granted to the plaintiff to lead evidence and therefore, the evidence of the plaintiff was closed. The matter was put up for arguments on 25.6.2007.

Although strictly speaking, once the matter was to be put up for arguments, on the newly framed

issue, the defendant having failed to lead evidence on the newly framed issue that the suit had not been filed by a competent person of the plaintiff, the only legal consequence would have been that the issue would be decided against the defendant as no evidence had been brought on the record. However, since I am not dealing with the matter on merits, no observation is being made on this aspect of the case. It needs to be noticed that the approach of the learned trial Court is against law. Surely if the plaintiff wanted to establish by the evidence that the suit had been properly instituted and was placing before the Court the best possible evidence necessary for determination of the issue, the Court was duty bound to have received such evidence. In ***Gopal Krishnaji Ketkar vs. Mohamed Haji Latif and others, AIR 1968 SC 1413***, the Hon'ble Supreme Court has held that irrespective of the onus, the party in possession of the best evidence should produce the same in the Court in order to assist the court in arriving at a just finding.

I find from the record that the trial Court has acted illegally in the exercise of the jurisdiction. This revision petition is accordingly allowed. The order dated 30.5.2007, closing the right of the plaintiff to lead evidence, is accordingly quashed and set aside.

The parties are directed to appear before the trial Court on ***5th October, 2007***, on which date the

learned trial Court shall proceed with the matter, grant a date for recording evidence of the parties and decide the matter in accordance with law.

July 23, 2007. **(Dev Darshan Sud)**
(aks) **Judge.**